IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SAGE DINING SERVICES, INC., **Plaintiff,**	§ § §	
v.	§	**No. 5:17-cv-00499**
L.P., A MINOR, AND L.G.P. AND M.P., THE PARENTS OF L.P., **Defendants.**	§ § § §	

COMPLAINT

SAGE Dining Services, Inc. ("SAGE" or "Plaintiff"), by and through its undersigned counsel, brings this action against L.P. ("L.P.") for: (1) Trademark Infringement/Counterfeiting, and (2) Unfair Competition and against L.P. and L.P.'s parents, L.G.P. and M.P. ("Parents") for Violation of the Texas Theft Liability Act (collectively "Defendants"). Plaintiff seeks injunctive relief, an accounting of L.P.'s profits, and damages pursuant to Sections 32 and 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq*. (1994) ("Lanham Act"). *See* 15 U.S.C. §§ 1114 and 1125(a)). Plaintiff seeks actual damages pursuant to Title 6 Tex. Civ. P. & Rem. Code 134.005(a)(2). Plaintiff further seeks an award of attorney's fees and costs associated with these proceedings. *See* 15 U.S.C. § 1117 and Title 6 Tex. Civ. P. & Rem. Code 134.005(b).

PARTIES

1. Plaintiff is a Delaware corporation with a principal place of business located at 1402 York Road, Suite 100, Lutherville, Maryland 21093.

2. Upon information and belief, L.P. is a minor individual who is domiciled at 141 Cloverleaf Avenue, San Antonio, Texas 78209 and is a resident of the State of Texas.

3. Upon information and belief, Defendants L.G.P. and M.P. are the parents of Defendant L.P. who are domiciled at 141 Cloverleaf Avenue, San Antonio, Texas 78209 and are residents of the state of Texas.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this Action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and under the Lanham Act, 15 U.S.C. § 1121.

5. This Court also has jurisdiction over this action under 28 U.S.C. § 1332(a), as this is a matter between citizens of different states in which the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

6. This Court also has supplemental jurisdiction over the claim for Violation of the Texas Theft Liability Act under 28 U.S.C. § 1367, as the claim is so related to the claims in the action within this Court's original jurisdiction that they form part of the same case or controversy.

7. This Court has personal jurisdiction over Defendants because Defendants reside in this Judicial District in the State of Texas.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c).

FACTS

Plaintiff's Trademarks

9. Since its inception in 1990, Plaintiff has become a well-known and recognized provider of dining services, namely catering and contract food service offered onsite to public and private businesses and institutions.

10. Plaintiff is the owner of a number of Federal Trademark Registrations and Applications for SAGE® alone, or in conjunction with other marks, in a variety of Classes, including International Classes 9 and 42. These Registrations and Applications include:

a. SAGE® (U.S. Registration No. 2,712,358) for “dining services, namely catering and contract food service offered onsite to public and private businesses and institutions” in International Class 42;

b. SAGE® (U.S. Registration No. 5,198,784) for “providing a website featuring a non-downloadable application for users to view menus, nutritional information and ingredient lists” in International Class 42;

c. SAGE® (U.S. Application No. 87/181407) for “downloadable mobile application for users to view menus, nutritional information, ingredient lists; downloadable mobile application for users to view and manage student meal plan accounts; downloadable mobile application for users to purchase and pay for food” in International Class 9;

d. SAGE DINING SERVICES® (U.S. Registration No. 2,733,649) for “dining services, namely catering and contact food service offered on-site to public and private businesses and institutions” in International Class 42;

e. SAGE DINING SERVICES and Design® (U.S. Registration No. 2,467,001) for “dining services, namely catering and contract food service offered onsite to public and private businesses and institutions” in International Class 42;

f. S and Design® (U.S. Registration No. 2,422,858) for “dining services, namely catering and contact food service offered on-site to public and private businesses and institutions” in International Class 42; and

g. TOUCH OF SAGE® (U.S. Application No. 87/216399) for “downloadable mobile application for users to view menus, nutritional information, ingredient lists; downloadable mobile application for users to view and manage student meal plan accounts; downloadable mobile application for users to purchase and pay for food” in International Class 9 (collectively, the “SAGE® Marks”).

11. Attached as Exhibit “A” is a true and correct copy of print-outs taken from the U.S. Patent and Trademark Office website of Plaintiff’s Registrations and Applications for its SAGE® Marks.

12. Plaintiff has continuously and extensively used, advertised, and promoted the SAGE® Marks in commerce throughout the United States in connection with its dining services, as well as a variety of related products and services, including a downloadable mobile

application branded "Touch of SAGE" ("Touch of SAGE App") for users to view menus, nutritional information, ingredient lists, manage student meal plan accounts and purchase and pay for food ("Products and Services"). Attached as Exhibit "B" are true and correct copies of print-outs taken from Plaintiff's website and mobile application showing use of the SAGE® Marks as they appear in commerce.

13. Plaintiff carefully supervises, monitors, and controls the quality of all Products and Services offered in connection with the SAGE® Marks to ensure the products are of the consistently high quality for which SAGE is known.

14. Plaintiff has expended significant capital and devoted substantial amounts of time and money to the production, marketing, and promotion of the SAGE® Marks.

15. As a consequence of Plaintiff's continuous and extensive use, advertisement, marketing, and promotion of the SAGE® Marks and of Products and Services offered in connection with, and under and using, the SAGE® Marks, the SAGE® Marks are distinctive of Plaintiff's Products and Services and have obtained strong secondary meaning.

L.P.'s Infringement of the SAGE® Marks

16. Upon information and belief, L.P. is a student at St. Mary's Hall Preparatory School in San Antonio, Texas, which is a customer/client of SAGE.

17. On May 17, 2017, SAGE discovered an unauthorized, illegitimate copycat version of its Touch of SAGE App available for download on the Google Play Store, which identified L.P., the Defendant herein, as the "developer" of the copycat app and providing the email address and physical address of L.P. ("Unauthorized App"). *See* Exhibit "C."[1]

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[1] Certain documents and correspondence attached to this Complaint have been redacted to protect the identity of L.P. who is a minor.

18. Upon information and belief, L.P.'s Unauthorized App was added to the Google Play Store on May 3, 2017. *See id.*

19. The Unauthorized App created by L.P. includes an unlawful reproduction of the SAGE® Marks, including the Word Mark SAGE®, the SAGE DINING SERVICES® Mark and its S and Design® "swoosh" Mark. The Unauthorized App similarly unlawfully used, without authorization, Plaintiff's TOUCH OF SAGE® Mark, which is the subject of a pending Trademark Application. *See id.*

20. Moreover, because of the similarity between the legitimate Touch of SAGE App and L.P.'s Unauthorized App, the two apps were presented side-by-side to consumers in the Google Play Store, furthering the likelihood that a consumer would mistakenly believe that L.P.'s Unauthorized App was either the legitimate Touch of SAGE App and/or otherwise associated or affiliated with, or sponsored by, SAGE. *See* Exhibit "D."

21. As a result of the unlawful use of its Intellectual Property, and in order to protect consumers from confusion, SAGE immediately contacted Google and requested that L.P.'s Unauthorized App be immediately removed from the Google Play Store.

22. On May 18, 2017, Google responded that L.P.'s Unauthorized App had been removed from the Google Play Store. *See* Exhibit "E."

Plaintiff's Attempt to Resolve the Dispute Without Judicial Intervention

23. In order to ensure that L.P. cease his unlawful use of the SAGE® Marks, on May 17, 2017, immediately upon learning of L.P.'s Unauthorized App, SAGE contacted via telephone and e-mail the, Head of School at St. Mary's Hall (the "Head of School"). *See* Exhibit "F."

24. The Head of School thanked SAGE for advising him of the situation and assured SAGE that he would speak with L.P. regarding the impropriety of his conduct. *See id.*

25. In a further effort to ensure that L.P. cease the unauthorized use of the SAGE® Marks without judicial intervention, on May 17, 2017, SAGE's Chief Financial Officer and General Counsel of SAGE, wrote to the email address identified in the "Developer" section of L.P.'s Unauthorized App.

26. In the email, SAGE's Chief Financial Officer and General Counsel of SAGE advised L.P. that his Unauthorized App on the Google Play Store unlawfully used the SAGE® Marks without authorization and demanded that L.P. remove his Unauthorized App and cease and desist from further infringement of the SAGE® Marks. *See* Exhibit "G."

27. In response to SAGE's Chief Financial Officer and General Counsel of SAGE's email, L.P. admitted that he was the creator of the Unauthorized App and professed remorse for his action. *See id.*

L.P. Again Uploads His Unauthorized App

28. Unfortunately, L.P.'s purported remorse was insincere as on May 26, 2017, SAGE discovered that L.P.'s Unauthorized App was once again available for download on the Google Play Store.

29. While the second version of L.P.'s Unauthorized App contained a different title than its predecessor, it still prominently featured the SAGE® Marks without permission or authorization. *See* Exhibit "H."

30. In addition, as with the prior Unauthorized App, the Developer of the app is identified as L.P., the Defendant herein. *See id.*

31. Moreover, L.P.'s second Unauthorized App contained the subtitle, presumably directed to SAGE, "Sue Me I dare you." *See* Exhibit "I."

32. As such, L.P.'s infringement of the SAGE® Marks was incontestably intentional, purposeful and egregious.

33. SAGE again advised the Head of School at St. Mary's Hall, on May 27, 2017 that L.P. reposted the Unauthorized App on the Google Play Store. *See* Exhibit "F."

COUNT I

Unauthorized Use and Counterfeit of Federally Registered Trademarks Under 15 U.S.C. § 1114(1) of the Lanham Act (AGAINST DEFENDANT L.P.)

34. The allegations set forth in Paragraphs 1 through 33 above are incorporated herein by reference and made a part of this Count as if fully set forth herein.

35. L.P.'s use of the SAGE® Marks, or colorable imitations thereof, in connection with the Unauthorized App constitutes the use in commerce of a reproduction, copy, counterfeit, or colorable imitation of a registered trademark, as well as the misappropriation of Plaintiff's goodwill and reputation associated with the mark, which has caused and is likely to continue to cause confusion or to cause mistake or to deceive in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

36. Upon information and belief, L.P. has intentionally used Plaintiff's SAGE® Marks, or colorable imitations thereof, knowing it is the exclusive property of Plaintiff in connection with the sale, offering for sale and distribution of an Unauthorized App.

37. L.P.'s use of the SAGE® Marks, or colorable imitations thereof, in connection with the sale, offering for sale and distribution of an Unauthorized App is likely to confuse the purchasing public, as well as others engaged in business relations with Plaintiff.

38. L.P.'s use of the SAGE® Marks, or colorable imitations thereof, in connection with the sale, offering for sale and distribution of an Unauthorized App injures the reputation, goodwill, and prestige of Plaintiff and impairs the value of its SAGE® Marks, which are uniquely associated with Plaintiff's Products and Services, and causes other injury to Plaintiff. Plaintiff

and the public will suffer irreparable injury unless the L.P. is restrained from using the SAGE® Marks.

39. Upon information and belief, L.P. engaged in and continues to engage in the aforementioned activities with the intent to confuse and deceive consumers into believing that L.P. and the Unauthorized App L.P. distributes, offers for sale and sells is in some way sponsored by, affiliated, or associated with Plaintiff, when in fact it is not.

40. Upon information and belief, the foregoing acts of infringement have been and continue to be deliberate, willful, and wanton, making this an exceptional case pursuant to 15 U.S.C. § 1117.

WHEREFORE, L.P. should be restrained and enjoined from creating, offering for sale, selling, distributing, and marketing any Unauthorized App, or any related products or services, marked with or using any of the SAGE® Marks, any colorable imitations thereof, or any other confusingly or deceptively similar marks or names pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116. In addition, Plaintiff is entitled to the other remedies available to it under the Lanham Act including, but not limited to, compensatory damages, treble damages, statutory damages, disgorgement of profits, and an award of costs and attorney's fees.

COUNT II

False Designation of Origin and Unfair Competition Under 15 U.S.C. § 1125(a) of the Lanham Act (AGAINST DEFENDANT L.P.)

41. The allegations set forth in Paragraphs 1 through 40 above are incorporated herein by reference and made a part of this Count as if fully set forth herein.

42. At all times relevant to this lawsuit, Plaintiff has offered for sale and sold in interstate commerce an Unauthorized App, which incorporates Plaintiff's SAGE® Marks, or a mark confusingly similar thereto.

43. Plaintiff's SAGE® Marks are uniquely associated with Plaintiff's Products and Services.

44. L.P.'s activities in passing-off its Unauthorized App as a legitimate version of Plaintiff's Touch of SAGE App, which wrongly and deceptively confuses the public.

45. Upon information and belief, Plaintiff has lost, and will lose in the future, sales in an unknown amount due to the consumers' erroneous belief that the L.P.'s Unauthorized App is genuine and emanates from Plaintiff.

46. Plaintiff has been and will also continue to be injured by the fact that it has no control over the type or quality of L.P.'s Unauthorized App or the promotional advertising activities utilized by L.P.

47. L.P.'s activities in "passing-off" his Unauthorized App injures the reputation, goodwill, and prestige of Plaintiff, impairs the value of Plaintiff's SAGE® Marks, which are uniquely associated with the Plaintiff's Products and Services, and causes other injury to Plaintiff.

48. Upon information and belief, L.P.'s actions were and are done willfully with full knowledge of the falsity of such designations of origin and false description or representations, and with the express intent to cause confusion, mislead and deceive the purchasing public, to trade upon the high quality reputation of Plaintiff, and to improperly appropriate the valuable trademark rights of Plaintiff, all to the detriment of Plaintiff.

49. The aforesaid acts of the L.P. constitute false designation of origin and false description or representation and unfair competition, in violation of 15 U.S.C. § 1125(a) of the Lanham Act.

WHEREFORE, L.P. should be restrained and enjoined from creating, offering for sale, selling, distributing, and marketing any Unauthorized App, or any related products or services, marked with or using any of the SAGE® Marks, any colorable imitations thereof, or any other confusingly or deceptively similar marks or names pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116. In addition, Plaintiff is entitled to the other remedies available to it under the Lanham Act including, but not limited to, compensatory damages, treble damages, disgorgement of profits, and an award of costs and attorney's fees.

COUNT III

Violation of Texas Theft Liability Act
(AGAINST ALL DEFENDANTS)

50. The allegations set forth in Paragraphs 1 through 49 above are incorporated herein by reference and made a part of this Count as if fully set forth herein.

51. L.P. committed theft of SAGE intangible property within the meaning of Title 7 Texas Penal Code Section 31.01(5)(b).

52. L.G.P. and M.E.P, as the legal guardians and Parents of L.P., have the legal duty of control and reasonable discipline of L.P. and are thus liable for his act of theft pursuant to Title 6 Tex. Civ. P. & Rem. Code 134.003(b).

53. The aforesaid acts of Defendants caused actual damage to SAGE in an amount to be proven at Trial.

WHEREFORE, Plaintiff is entitled to entry of judgment against all Defendants awarding it actual damages and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter Judgment in its favor on the claims set forth in the paragraphs above and award Plaintiff the following relief:

A. That L.P. and his agents, servants, employees, representatives, and attorneys, and all persons in active concert or participation with him, be permanently enjoined from doing, aiding, contributing to, causing, and abetting any of the following:

(1) directly or indirectly using or infringing any of Plaintiff's SAGE® Marks, either through counterfeits or by using any colorable imitations or confusingly similar facsimiles thereof;

(2) creating, offering for sale, selling, distributing, and marketing any Unauthorized App, or any related products or services, marked with or using any of the SAGE® Marks, any colorable imitations thereof, or any other confusingly or deceptively similar marks or names;

(3) engaging in any acts or activities, directly or indirectly, calculated to trade upon Plaintiff's SAGE® Marks, or the reputation or goodwill of Plaintiff, or in any manner to compete unfairly with Plaintiff;

(4) using on, or in connection with, the creation, marketing, distribution, offering for sale, and/or sale of any Unauthorized App or related products or services, or on or in any packaging, cartons, labels, price tags, tags, display carts, wrappers, promotional materials, or advertising material of any nature whatsoever, any infringing counterfeits, copies, or colorable imitations of Plaintiff's SAGE® Marks; and,

B. That an accounting be had of L.P.'s sales and profits relating to L.P.'s sale of the Unauthorized App, and that L.P. pay to Plaintiff the following:

(1) all profits derived by L.P. and damages suffered by Plaintiff resulting from L.P.'s sales or other exploitation of any other Unauthorized App or related products or services branded with any infringing counterfeits, copies, or colorable imitations of Plaintiff's SAGE® Marks, or as a direct or indirect result of its use of any infringing counterfeits, copies, or colorable imitations of Plaintiff's SAGE® Marks, or any of the other acts complained of hereinabove, or, in the alternative, statutory damages of $2,000,000 per counterfeit mark, pursuant to 15 U.S.C. § 1117(c);

(2) treble damages sustained by Plaintiff as a direct or indirect result of any of the acts complained of herein; and

(3) Plaintiff's attorney's fees and costs pertaining to this action pursuant to 15 U.S.C. § 1117(a) of the Lanham Act.

C. That Plaintiff be awarded its actual damages pursuant to Title 6 Tex. Civ. P. & Rem. Code 134.005(a)(2) and its attorney's fees and costs pursuant to Title 6 Tex. Civ. P. & Rem. Code 134.005(b).

D. That Plaintiff be awarded such other and further relief at law or in equity, as this Court may deem just and proper.

Date: June 6, 2017

Respectfully submitted,

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**Pro Hac Vice* Applications to be Submitted